

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,) 14-CR-00050-1-AB
)
 vs.)
)
JUCONTEE THOMAS WOEWIYU, a/k/a)
JUCONTEE THOMAS SMITH,) Philadelphia, PA
) June 12, 2018
) 11:57 a.m.
 Defendant.)

TRANSCRIPT OF DEFENSE'S OPENING STATEMENT
BEFORE THE HONORABLE ANITA B. BRODY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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I N D E XOPENING STATEMENT:PAGE

By Ms. Henry

3

1 (The following was heard at 11:57 a.m.)

2 (Jury present)

3 MS. HENRY: Five more minutes of good morning. Good
4 morning, ladies and gentlemen.

5 THE JURY: Good morning.

6 MS. HENRY: Good morning, Your Honor, counsel.

7 Ladies and gentlemen, Tom never lied. Tom Woewiyu
8 had not reason and no motive to lie. Did you -- the only
9 dispute in this case is about four questions on a citizenship
10 application and questions that were asked during a 15-minute
11 interview. That's it. That's the only thing this case is
12 about.

13 Did you get that from the Government's hour-plus
14 opening statement where they're giving you a detailed history
15 lesson on the Liberian Civil War? Look, we don't disagree
16 about what happened in West Africa 30 years ago during the
17 First Civil War. It's well documented.

18 You heard them say they're going to have numerous
19 historians come in and tell you about the Liberian Civil War.
20 But all of that has nothing to do with whether Tom Woewiyu
21 lied on his Immigration form or whether he tried to defraud
22 Immigration by hiding who he is, because that's what the crime
23 is in this case.

24 He never tried to hide who he was, he never lied,
25 and because of that your verdict must be not guilty in this

1 case. Remember, this case is about four questions and the
2 testimony in this case should last about three days. But you
3 heard from Mr. Thayer that they're talking about bringing
4 numerous witnesses they plan to call for trial, an extensive
5 list of witnesses, witnesses that are completely unnecessary
6 to this case and unnecessary in that they're talking about
7 what happened 30 years ago on the other side of the globe.

8 Not only is it irrelevant, but it's largely
9 undisputed and I want to talk to you about what we're agreeing
10 on so that you can see what this case is really about. We
11 agree -- and I want to say this now right up front, we agree
12 that Tom is in the NPFL, okay?

13 He's in the NPFL -- the National Patriotic Front of
14 Liberia. He was at some times a spokesperson, some times the
15 minister of defense, we agree on that, okay? Everybody knew
16 that, Tom was in the NPFL.

17 The NPFL's goal was to oust the evil dictator,
18 Samuel Doe. We agree with that, okay? They want to bring in
19 journalists and diplomats and witnesses and people from the
20 Defense Department to say that Tom was in the NPFL. He was in
21 the NPFL, okay?

22 They want to bring all these witnesses to talk about
23 the history, and in fact what the NPFL was trying to do, they
24 were trying to get rid of Samuel Doe, the man who usurped the
25 Government, the dictator. That was NPFL's plan. Tom was in

1 the NPFL. Also, we're agreeing that some NPFL soldiers -- and
2 you're going to see pictures of these soldiers in the bush as
3 he described it and you're going to see what they did and how
4 disorganized it was, but some of those NPFL soldiers committed
5 violent acts and the war was an exceptionally brutal war.

6 And you're also going to hear -- and we agree, that
7 child soldiers were in the NPFL, so we agree on all of those
8 things. And because they're not in dispute, those issues
9 aren't in dispute, why does the Government need to drag these
10 poor people across the globe and make them come here and
11 testify and re-live some of the most awful things that ever
12 happened to them?

13 What did he say, 24 people, never even been on an
14 airplane, why do they have to bring them here and put those
15 people through this and put you through it too? I mean, not
16 just the time, I'm not just talking about the time, I'm
17 talking about the emotion of forcing you to listen to these
18 horror stories, and they will be awful, okay?

19 But why make everyone sit through that and make
20 these people go through that? Because at the end of the day,
21 you're not going to be able to do anything about it.

22 There's nothing that this Court can do to fix what
23 happened to them and there's nobody in this courtroom --
24 nobody in this courtroom who can ever make these people whole,
25 as much as all might want them to be.

1 So then what is it all for? Come on. The only
2 reason the Government is calling all these witnesses is to
3 emotionally manipulate you and distract you from the real
4 issue in this case. It's smoke and mirrors, ladies and
5 gentlemen.

6 The issue in this case is the four questions on the
7 citizenship application, questions that Tom Woewiyu answered
8 to the best of his knowledge and belief and that's what's
9 required by law.

10 Now, you heard the Government say he had to take an
11 oath. Well you know what that oath was? That oath was that
12 Tom had to answer those questions to the best of his knowledge
13 and belief -- his knowledge and belief, his opinion, okay?
14 And I'm going to show you that in a few minutes. And he did
15 answer those questions correctly, and we're going to explain
16 to you why.

17 So that's what the case is about. But if we're
18 going to be forced to talk about this war, let's be real.
19 There was plenty of blame to go around, okay? There was not
20 one good guy and one bad guy.

21 You know, you only heard like a little bit of it
22 from the Government in the opening, but even the supposed
23 "peacekeeping forces" he was talking about, ECOMOG, you know,
24 they were killing people you're going to find out.

25 So it was a crazy and awful time, it was a mess over

1 there and that can be hard for us to imagine what that was
2 like because here in the United States we have like the most
3 organized and sophisticated military. Some of you have served
4 in that military and so you know that first-hand.

5 But this was Africa, okay, this is the bush. This
6 is 30 years ago. More than half of Liberia today doesn't have
7 running water or electricity. Things are really different
8 over there. And you're not here -- you're not here to pass
9 judgment on the way the Liberian Civil War was fought. That's
10 what they're really mad about, right?

11 I mean, you saw when he comes over to talk to Tom
12 and try to point in Tom's face, it's not about which box did
13 you check on the form. He's talking about what went down in
14 the Liberian Civil War and that's none of our business and
15 that's not what you're here to decide.

16 You're here to pass judgment on an Immigration case.
17 That's what the Judge told you during voir dire, right? What
18 are the charges? Immigration charges.

19 But I've got to stop and say for a minute and tell
20 you that what you're telling you about Tom Woewiyu was wrong
21 and you're going to hear he's not the man they're painting him
22 to be and you're going to hear about that during this trial.

23 But most importantly for you and for the purposes of
24 this trial is that he never intended to mislead Immigration
25 about who he was. That's why he's not guilty. But I'll give

1 you a small abbreviated version of the history as it relates
2 to Tom. The story starts with Samuel Doe, even before that
3 with the America Liberians like he told you, and then Samuel
4 Doe came.

5 Everyone agrees he was a genuinely bad man. He
6 killed the president who was this guy James (sic) Tolbert,
7 assassinated 13 of his cabinet members and usurped the office
8 of president.

9 Then as he told you, he went and killed Gio and Mano
10 Tribes after someone tried to -- there was a failed coup on
11 him, and at this time what's going on here with Tom is that
12 Tom joins the majority of Liberians abroad and here, in
13 wanting to get back to a constitutional democratically elected
14 government in Liberia.

15 You're going to hear Tom's own words because he was
16 the spokesperson of the NPFL. You're go to hear that he and
17 other Liberians viewed Doe as a usurper, not the leader of any
18 legitimate government and that he needed to go. He told you
19 that in the opening.

20 They agreed Doe needed to go and so Tom, in 1987,
21 was part of a group that formed the NPFL and he began as a
22 spokesperson as I told you and then was defense minister. And
23 each of these positions, even though that actually -- and
24 you're going to find out that even though they had different
25 titles, he's basically doing the same thing.

1 Like he said, he was -- you saw the picture with 19
2 microphones in front of him, he's the person who's giving
3 speeches, giving testimony talking about the NPFL. And in his
4 positions for the NPFL, Tom met with United States officials
5 including the United States Ambassador to Liberia.

6 You see, the United States had an interest in this
7 conflict. There were large scale US industries operating in
8 Liberia at the time -- rubber industries, timber industries,
9 so the US was playing both sides of the fence during this
10 conflict and at times, gave aid to the NPFL, okay?

11 He didn't mention that to you. So but the point
12 being that things were very complicated. It was war. It was
13 war. And when we're looking back on history when you're
14 studying a revolution or a civil war, you know, people will
15 have different opinions.

16 And this discord, this disagreement about who
17 started it and who's to blame and who did what, it can go on
18 and on and it can never be resolved, and reasonable minds can
19 differ and the debate can go on. But this isn't history
20 class. This isn't a debate club, okay?

21 This is Federal Court and Tom is charged with
22 Federal Immigration crimes and not war crimes. So the
23 indictment basically charges Tom with intentionally trying to
24 hide who he was and what he had done in applying for
25 citizenship.

1 So talk about that a little bit, there's a whole
2 bunch of charges but it's all about the same thing. It's that
3 -- and the reason that these charges exist, he's right, is
4 that we can't have people hiding who they are coming in.

5 It's a crime to come and try to trick Immigration
6 authorities, pretend to be someone else and slip in and get
7 citizenship. That's what this crime is about. Tom never did
8 anything even close to that and the evidence you're going to
9 hear in this case will back that up.

10 So what you have to figure out and what you'll have
11 to decide in this case is what happened during this
12 application process, the application process for citizenship,
13 and you have to decide that what was in Tom's mind during this
14 process, that's what this whole case is about.

15 So let's talk about the steps in the citizenship
16 process because the information the Government gave you was a
17 tiny snippet of it so let's talk about what happens, how you
18 become a citizen.

19 The evidence in this case is going to show you that
20 the citizenship application process which begins with the
21 determination of whether or not you're eligible, so not
22 everyone can apply to be a citizen.

23 You have to have been in residence for a certain
24 amount of time in the United States, you can't have certain
25 kinds of convictions because those things render you

1 ineligible, okay?

2 After you have decided if you're eligible or not,
3 the next thing you do is that you fill out what's called the
4 form N-400. That's the form we've been talking about, the
5 ten-page form. It's commonly known as the citizenship
6 application.

7 The form was -- back when Tom filled it out, was ten
8 pages. It's now 20 pages long, okay? But the N-400 is the
9 citizenship application and a person will fill that out with
10 their lawyer or by themselves.

11 In this case you're going to hear that Tom's lawyer,
12 Attorney Nguyen (phonetic), filed the application on Tom's
13 behalf in 2006 so and you'll see his name is at the back of
14 the document.

15 So Tom's lawyer fills out -- and this is a normal
16 situation, would be the second stage is doing the N-400. The
17 next thing an applicant has to do is get their fingerprints
18 taken and they do a background check and then you schedule the
19 citizenship interview.

20 Before you have the interview you have to get a test
21 on English language and US civics and you schedule this
22 interview with the Immigration official. At the interview the
23 person is placed under oath and asked many of the same
24 questions that's in that N-400. They go over it and try to
25 make corrections.

1 You're going to hear that this interview usually
2 takes about 15 minutes so a person who was an Immigration
3 officer has a whole list of cases for the day, they get their
4 cases, they set up the interviews, it's 15 minutes apiece.

5 After the interview, the Immigration officer sends a
6 written followup question and answer protocol which is called
7 the N-14. He didn't mention the N-14, but that's part of this
8 Immigration process. The first thing is you fill out and you
9 check the boxes and send the N-400 in.

10 But then the Immigration officer looks at that and
11 says I have some more -- I want to know more, I have more
12 questions than a yes or no, they ask specific questions, and
13 then the applicant sends those answers in in the long form.

14 In this case, Tom's attorney sent them in because he
15 was represented by counsel, so we'll talk about that. But the
16 second part is the N-14. After Immigration -- and listen, I
17 agree with that the Government is saying, the US has a vital
18 interest in this process, okay?

19 It's not just fill out a little form and we'll take
20 it and you're going, that's -- that's all they look at, that's
21 ridiculous. Of course not. There's an N-400, there's
22 fingerprints, there's background checks, there's the
23 interview, there's the N-14 where they can ask any questions,
24 the questions are answered.

25 Then Immigration does their own investigation and at

1 that point when they're done their investigation, the entire
2 application is submitted for adjudication, meaning it's ready
3 to be voted on -- is it going to be -- are you going to be
4 admitted or are you going to be denied, okay? That's the
5 application process.

6 So and all of this is an effort for Immigration to
7 know as much as they want -- as much as they can, about an
8 applicant. The whole point of this is so they have all the
9 information because it is a very precious commodity to become
10 a United States citizen.

11 So they need to know as much as they can and that's
12 why the process is set up, so that Immigration can gain as
13 much knowledge about an applicant so they know who they're
14 dealing with.

15 What this means is the N-400, what's answered on
16 that form, is a living and breathing document meaning that
17 when you fill out the N-14s and you give more information on
18 questions you answered in the N-400, as long as that's
19 received before adjudication, before they make a decision,
20 that's acceptable, okay?

21 And you're going to hear evidence from experts, from
22 witnesses, from Immigration people who are going to tell you
23 that that's the process.

24 So Tom is only guilty if during this process, this
25 citizenship application process, he tried to hide who he truly

1 was, if he tried to pull the wool over their eyes and pretend
2 to be somebody else, and he never did. So who is Tom? Who is
3 Tom Woewiyu? Okay, Tom's an open book and he's always been
4 completely open and forthcoming about who he is, his
5 activities and his affiliation since he first arrived in this
6 country 50 years ago.

7 He's been here 50 years. Tom came to the United
8 States in 1969 on a student visa and he earned a college
9 degree in labor relations. During that time he obtained
10 lawful permanent resident status which sometimes people refer
11 to as a "green card," so he's been here lawfully that whole
12 time.

13 Since 1967, he's always been here as a lawful
14 permanent resident. He was later married to a US citizen and
15 he raised children here. Some of them are in the courtroom
16 today to support their dad. In fact, Tom has 21 grandkids.

17 So and at various times he worked in the United
18 States selling auto parts, he worked as a shop steward in a
19 manufacturing plant and he's also worked in real estate.

20 And after Tom came here in 1969, you know, he was
21 busy raising his children and working and becoming part of the
22 fabric of the United States and he wasn't involved in Liberian
23 politics at all for all those years.

24 It was only when Doe's reign in Liberia became
25 intolerable to people like him and people in Liberia that he

1 decided to get involved to try to bring back a constitutional
2 democracy, a democratic -- small "d" -- system of government
3 to Liberia. So why did Tom care?

4 Because he still had family -- he's from Liberia,
5 that's his country, he has -- still has family there so it
6 mattered to him when the government was ousted, it mattered to
7 him when Doe, a dictator, took office, when there was no
8 democracy in his country anymore because that affected people
9 he loved, friends and family that he still had over there.

10 And when he saw what was happening he got involved
11 and he's always been honest about how he got involved, which
12 is by getting involved in the NPFL.

13 And you're going to hear that not only did he get
14 involved in the NPFL, but everyone knew that he was in the
15 NPFL long before he applied for citizenship, okay? The
16 Immigration knew that Tom was in the NPFL.

17 I mean, the Government can't have it both ways.
18 They can't say he was trying to hide who he was, but he was
19 the spokesperson for the NPFL. He was never trying to hide
20 who he was.

21 Everyone in the Government, our Government, knew
22 that Tom was in the NPFL. Let me tell you why. Tom, as the
23 Government said, gave international press -- he was at a press
24 conference in 1994 saying that he's the president -- he's the
25 spokesperson and minister of defense for the NPFL, so he's on

1 the record saying that.

2 BBC interviews that they want you to listen to,
3 hours and hours of BBC interviews that say -- I'll tell you
4 what he said on those. I'm the president of the NPFL, I'm the
5 minister of defense of the NPFL and talked about the policies
6 and talked about wanting to bring democracy to Liberia.
7 That's what he says over and over again on those tapes.

8 So our Government knew who he was and not only was
9 he interviewed and not only was he on tape being interviewed,
10 he wrote articles in his name as NPFL's spokesperson. He gave
11 this Dutch statement, you heard about that and testimony to a
12 Dutch magistrate.

13 What did he say? I'm in the NPFL, I'm the
14 spokesperson. He recorded statements with United States
15 Customs officials, you heard that at the platform in Miami.
16 Guess what he said?

17 I'm buying guns, I want to buy guns or get
18 interested in that -- info on that for the NPFL. So our
19 Government knew. He also gave that affidavit -- you heard
20 about the affidavit they talked about in Court in the
21 Firestone litigation.

22 He said that, he didn't tell you that it was in the
23 Firestone litigation but remember I said before that there was
24 -- you know, the US had some business interests in Liberia?
25 Well one of those -- the company, the rubber company I talked

1 about is Firestone and Tom filed an affidavit.

2 That's like under oath swearing in Court -- and what
3 did he say? Of course, I work for the NPFL, I'm the minister
4 of defense. So not only did Customs know, not only did he
5 file an affidavit in Court, not only did he give a billion
6 interviews, but he met with FBI and Immigration officials
7 twice before he applied.

8 Before his application was adjudicated, okay, before
9 we reached that bottom line, he met with them twice, once in
10 2005 -- he had heard that there had been an assassination
11 attempt on -- or that someone was threatening a member of the
12 government in Liberia.

13 So he reached out, met with representatives from our
14 Government to tell them about that and said as my role as the
15 NPFL spokesperson I heard about this, I think you should know
16 about that, and passed it on to who needs to know.

17 He also met with the FBI agent and before his
18 application was adjudicated, because they were interested in
19 him to give information about another person they were trying
20 to deport, a Liberian national, and they wanted to know from
21 Tom, you're in the NPFL, tell us what you know about this guy
22 named Boley.

23 The guy's name is Boley. Tell us what you know
24 about Boley. He went with his lawyer to meet with the FBI and
25 told them all about Boley and said as NPFL, I did this, I did

1 that. As spokesperson I did this and here's how I know Boley
2 and here's what I can tell you. You can use this in your
3 deportation against him. And the Government put him on their
4 witness list to call as a witness.

5 So for them to say that they don't know that he's in
6 the NPFL, that he's hiding that he's in the NPFL, that he's
7 trying to sneak through Customs -- I mean sneak through
8 Immigration and slide by with no one knowing who it is is
9 ridiculous.

10 He met with Immigration, he met with the FBI in his
11 capacity as spokesperson for the NPFL. So Tom was never
12 trying to hide who he was and they knew it long before he
13 filled out his application.

14 You know, the Government kind of gave this
15 impression like we've got to -- we always have to know -- they
16 have to be honest on this little form we have because if
17 someone's not honest on that, then we would let them in and we
18 wouldn't know. You know, we could just -- you know, it's the
19 honor system.

20 Okay, first of all, not only did everybody know
21 about Tom being in the NPFL and not only did he meet with
22 authorities, but Immigration knew and they had information
23 about it in their file.

24 So this is a copy of Tom's Immigration file. It's
25 called thee "A" file. Everybody who's here as -- as either an

1 alien or a lawful permanent resident gets what's called an
2 "Alien" file and it's started when you first come over.

3 So it goes like in date from the bottom to the most
4 recent, and so this A file is so thick because Tom's been here
5 for 50 years. So this is what Immigration knew about Tom, the
6 items that are contained in his A file.

7 And there's times that -- not that they were -- this
8 is the usual, that Tom had to come back and report to
9 Immigration, you know, at times to update his information, any
10 kind of problem stuff would be in here -- interviews.

11 In fact, you're going to hear later that he was
12 convicted of some petty offense in the 70s. That's in here,
13 was reported right -- right away when he came in. It's in his
14 A file. So you can't let them try to tell you that they're
15 making a decision on a person applying for citizenship by what
16 they put on the form.

17 This is what they had on Tom before he even went in
18 for the meeting, before he even applied. So and that's their
19 job, I mean, that's the right thing to do, they should have
20 all that information, okay, because it is a precious
21 commodity, because they are the gatekeepers, they've got to
22 have it to keep this Alien file, this A file up to date with
23 everything about a person who is here not on a citizen status.

24 So you're probably wondering why Tom applied for
25 citizenship after all these years. I mean, he had been here

1 since 1969 as a lawful permanent resident which, you know, you
2 can just -- he could have stayed in that.

3 But he applied because Tom had heard -- he was under
4 the mistaken impression, someone had told him that if you were
5 an LPR, or a lawful permanent resident, you wouldn't be
6 eligible for Social Security.

7 And Tom was getting to the age where that was
8 something he was thinking about and he was afraid that all the
9 years he had been paying taxes and all the years he had been
10 paying into the Social Security system, that he wouldn't get
11 that benefit.

12 He was wrong about that, that's not the situation.
13 But that's what he thought and that's why he applied for
14 citizenship. And that's why he hired attorneys -- two
15 different attorneys to help him navigate through the system of
16 applying for citizenship.

17 And the process of applying can take, you know,
18 different lengths of time before it's actually adjudicated,
19 admitted or denied. In Tom's case he filled out the N-400 in
20 2006 and the denial came in 2010, and that's not unheard of.

21 So the Government cannot say that they didn't know
22 who Tom was before they adjudicated his application. And it's
23 not a federal crime to make an error on either of the forms or
24 to omit something from the form or to have a different
25 perspective on what something means.

1 It's only criminal, like I said, to try to hide and
2 sneak through and hide who you are and pretend to be somebody
3 that you're not to get citizenship. So let's go back to the
4 citizenship application process slide again because you see
5 what they're trying to say.

6 What they're trying to say is like -- okay, Tom told
7 everything before it was submitted to adjudication all the way
8 down here on his N-14, you're going to look at it, it's like a
9 20-page document, typed.

10 You're going to see that he told everything about
11 himself in that document and yet they're saying here on the N-
12 400 up at this part, he lied because he didn't fill this part
13 out.

14 But the point is he didn't intend to defraud the
15 Government, he gave them all the information about himself.
16 They had it all before it was submitted for adjudication.

17 But there's even more than a lack of intent in this
18 case, is that Tom didn't even lie. As I said before, it's
19 their opinion that he answered these four questions wrong,
20 okay, the four questions.

21 But he didn't. And quite frankly, their opinions
22 don't matter at all in this case. The only thing that matters
23 is how Tom interpreted these questions and what his -- what
24 Tom's knowledge and intent was when he answered the questions.

25 And I'm going to show you now on the screen if you

1 take a look, one of the things we talked about is the -- what
2 that signature line is. Remember, the US Attorney told you
3 that he met with at the end of the interview after she looks
4 at it and makes changes to the N-400 -- her name is
5 Eikerenkoetter.

6 I've worked really hard on getting that right, her
7 name is Ms. Eikerenkoetter and she puts her stamp on it and
8 Tom signs, and what the oath is, what he's swearing to is that
9 the evidence submitted by me are true and correct to the best
10 of my knowledge and belief, to the best of Tom's knowledge and
11 belief, okay?

12 So let's talk about the two forms that Tom filled
13 out and let's talk about what happens in that interview in
14 2009. Well let's talk first about who was at the interview.
15 So they go to the interview.

16 It's Tom, his attorney, Ray Basso. Okay, you're
17 going to meet him, he's going to come to Court and testify --
18 Tom, Ray Basso, and Ms. Eikerenkoetter who was the Immigration
19 official.

20 So they show up for their appointment scheduled at a
21 certain time in the morning -- it's like 10:00 in the morning
22 I think. She has her list of cases for the day and Ms.
23 Eikerenkoetter shows up and she has the N-400, she has Tom's A
24 file.

25 And because as they file things when stuff comes in,

1 the N-400 and the A file, the most recent -- anything --
2 whatever is most recent is on top. That's the way it works
3 with the A file. So she has the A file, she has Tom's N-400
4 and she begins to go over it with him, these questions that
5 Tom has answered to the best of his knowledge and belief.

6 And he attempted to do that along with his attorney,
7 okay, and look, when I say "attempt," I mean attempt because
8 these questions are not -- the questions at issue in this
9 case, the four questions, are not clearly stated, black and
10 white questions.

11 They're not yes and no questions in the traditional
12 sense because they're not questions like this -- are you
13 pregnant. Well, after a blood test you either are pregnant or
14 you're not pregnant, and that's not the kind of questions that
15 are being asked here. The questions are subject to
16 interpretation and the meaning of certain words are undefined.

17 For example like you know when you fill out your
18 income taxes and there's like a whole instruction section that
19 says, you know, when you're doing the Social Security number
20 put the dash or don't put the dash, there's all those kinds of
21 instructions for each question.

22 It's the same thing with this N-400. There is an
23 instruction section and they give you instructions on how to
24 answer the certain questions. That's part of the Government
25 document. But the questions that are at issue in this are

1 undefined.

2 None of the terms in those questions are defined in
3 the instructions, okay? So they're vague and Ray Basso is
4 helping Tom fill these out to the best of these knowledge.
5 And look, when I say they're unclear, it's not just me saying
6 they're unclear.

7 The application, as I said before, is now twice as
8 long as it was when Tom filled it out, an acknowledgment by
9 the Government that it was unclear before and they had to make
10 it twice as long to ask more questions. We're going to go
11 through that later.

12 But the four questions at issue in this case come
13 from the older version of the N-400 so let's go through them
14 one by one, okay?

15 And as we go through each question you're going to
16 see, it's going to be clear to you why Tom answered them the
17 way he did and why his knowledge and belief of those answers
18 was both correct and reasonable under the circumstances.

19 Let's start with Question 8. Question 8, and when
20 Tom was asked, "Have you ever been a member or associated with
21 any organization, association, fund, foundation, club or any
22 other party or group?" And the application that Attorney
23 Nguyen had sent in said "no."

24 And when Ms. Eikerenkoetter asked Tom, listen, did
25 you mean answer no to this or do you -- were you part of any

1 other organizations. At that time -- and you're going to hear
2 testimony about how this went down, Ms. Eikerenkoetter -- Tom
3 at that point starts going through his briefcase trying to
4 pull out his resume with all his information.

5 Ms. Eikerenkoetter says to him, look, I got 15
6 minutes, okay, we can cancel this and reschedule it if you
7 want, but that's all I have. And Tom said okay, and he gives
8 her the information on the Union of Liberian Associations in
9 the Americas.

10 This is an umbrella group, okay, it's a union of
11 different Liberian associations, it encompasses associations
12 in Liberia and associations in the United States. Encompassed
13 within its umbrella is the NPFL, and that's the evidence
14 you're going to hear in this case.

15 And the reason that he wrote one organization, the
16 umbrella organization instead of listing all the detailed
17 organizations, is because of the fact that Ms. Eiherenkoetter
18 gave him 15 minutes and told him otherwise we're going to have
19 to cancel this, and that's the advice that he received from
20 his attorney, Anthony Basso who was also there -- I mean,
21 sorry, Raymond Basso who was also there, who told him that's
22 fine, we can give them more details later in the N-14.

23 Now, so you're going to see on the N-14, the next
24 screen, you'll see and hear is where Tom is explaining in
25 writing how that situation went down where she said she had 15

1 minutes and then he said look, because of the time
2 constraints, I gave you the umbrella organization.

3 He explains that it is an umbrella organization,
4 okay? That's in his N-14. What's also in his N-14 that's
5 filed by Attorney Basso under oath, under -- it was a
6 notarized document, and in there Tom lists in two full pages
7 -- and you're going to get this so you can look through it
8 later, I know it's hard to see on the screen, he gives two
9 pages of every single group he's been a member of.

10 He starts with back in the 70s -- remember I told
11 you he worked in the automotive industry and that he was in
12 the AFL-CIO, that he was a Teamster. Talks about his church,
13 Christian Fellowship.

14 Then he starts to talk about he's in the NPFL, CRC,
15 he's in the NPFL and he talks about exactly what he does. It
16 gives details about what they're trying to do. Then he talks
17 about being a chairman of the ULAA, the umbrella group.

18 He talks about in 1995 that he's a member of a
19 church and he also then later talks about how he's currently
20 in the ULAA. NPFL is in here twice. Everything is in here.
21 He's given full disclosure on the N-14, he's followed the
22 advice of his counsel and he's answered the questions
23 completely well before his application is adjudicated, okay?

24 So they knew who he was and at worst, the worst the
25 Government can say about Question 8 is that his initial answer

1 was incomplete. But that's not criminal, okay, because he
2 gives full disclosure, no crime was committed in regards to
3 Question 8.

4 Let's talk about Question 10 and Tom's answer.
5 Question 10 asks, "Have you ever advocated either directly or
6 indirectly the overthrow of any Government by force or
7 violence?" And Tom said "no."

8 Remember when I told you that Tom had to answer
9 these questions to the best of his knowledge and belief, and
10 let me tell you, Tom certainly has genuine -- and you're going
11 to hear the -- if you're forced to listen to all these tapes
12 and all these witnesses, you're going to know one thing, is
13 that Tom had genuine and deeply rooted beliefs about the
14 country he was born and raised in.

15 And he, along with the other members of the NPFL,
16 were trying to unseat a tyrannical dictator. There was no
17 Government in place. Once Doe took office they were -- that
18 was that they were trying to do, they were trying to overthrow
19 a dictator, a usurper is what the language that Tom says in a
20 lot of his interviews, not a -- a usurper of the government,
21 okay?

22 So Tom said this in his filings that they talked
23 about in the Firestone case. Tom said the NPFL never intended
24 at any time from January, 1987 through the present to
25 overthrow the constituted government of Liberia forcibly or

1 otherwise, okay?

2 There was no government. There was no congress
3 under Doe, there was no senate, there was no democratic
4 government. Tom's efforts were to rid Liberia of a dictator
5 and a despot, not a government.

6 And Tom also in the same memorandum they were
7 talking about to the State Department, Tom said the military
8 has as its objective the overthrow -- of what? The Doe
9 dictatorship and in its replacement, a democratically elected
10 government.

11 See, that's why Tom answered that question the way
12 he did. He wasn't trying to overthrow the government, he was
13 trying to overthrow a dictator and install a democratic
14 government and that's the reason he answered that.

15 In fact, you're going to hear from Ms.
16 Eiherenkoetter that during the interview she asks him about
17 this question and that when she called what was happening in
18 Liberia "government," Tom laughed a little.

19 He laughed at that because there was no government.
20 There was no congress, there was no senate, there was no
21 government. Now look, a political science professor might say
22 oh, a dictatorship could be a kind of government.

23 But it wasn't in Tom's mind. In Tom's mind when he
24 answered that question to the best of his knowledge and
25 belief, that's what he was talking about.

1 And that's why him and his attorney answered that
2 question the way they did and that's why in the N-14
3 subsequent filings you'll see a lot of information that they
4 provided about Tom's efforts to bring a democratic government
5 to Liberia, so Tom wasn't lying when he said he didn't try to
6 overthrow the government.

7 Let's talk about Question 11. Question 11, "Have
8 you ever persecuted, either directly or indirectly, any person
9 because of race, religion, national origin, membership in a
10 particular social group or political opinion?"

11 As I said earlier, and listen, I'm sure you've caught
12 the vibe by now that this was a brutal civil war. There's no
13 question that NPFL soldiers did awful things and we don't
14 dispute that.

15 But at a lot of the times that these things were
16 happening, Tom was either traveling abroad or in the United
17 States. I mean, he maintained his residence in the United
18 States during this entire civil war.

19 He didn't live over there, he lived here. And
20 you'll see like a lot of the interviews -- his BBC interviews,
21 he's like where are you calling from? He's in the United
22 States, that's where he is. He's the spokesperson, but he's
23 here, so he wasn't the one laying hands on people in Liberia.

24 So Tom -- now the Government wants to paint him as a
25 policymaker in that because he made the policy or he espoused

1 the policy in the 15 microphones in front of him, that he's
2 responsible for everything NPFL soldiers did in the bush,
3 okay? But that's not at all who he was. He was a statesman
4 and more of a press secretary.

5 And the question on the form doesn't define the term
6 "persecute" or what they mean by "indirectly." They don't say
7 anywhere in there what they mean by persecute and what they
8 mean by indirectly.

9 And Tom never believed that the NPFL was persecuting
10 people because of their race, religion, national origin,
11 membership in a particular social group or political opinion.
12 He firmly believed that the NPFL was trying to help Liberians
13 by ridding the country of a vicious dictator. His aim was not
14 to persecute people because of their beliefs.

15 Now, there is issue with Doe supporters were
16 Mandingo and Krahn Tribespeople, but they were singled out
17 because of their national origin or membership in a group.
18 They were simply the other side in the war.

19 In Tom's mind, the NPFL was never persecuting anyone
20 but rather fighting a war and trying to defeat the enemy and
21 to him, this wasn't persecution, it was war.

22 And he genuinely wanted to help Liberians and that's
23 why he answered Question 11 the best he could to the best of
24 his knowledge and belief.

25 That's what his opinion was and that question asked

1 and to the best of your knowledge and beliefs, means to your
2 opinion that, you know, his reason for anything that the NPFL
3 did wasn't about ethnicity, it was about a quest to bring
4 democracy to Liberia.

5 So reasonable minds can differ, okay, on what this
6 question means and how a person is supposed to answer it if
7 they were involved in a war.

8 And the US Government has acknowledged that, has
9 acknowledged that this answer -- that this question is
10 insufficient, that Question 11, the question I'm talking
11 about, is vague.

12 And I'll tell you why they've acknowledged that.
13 Because as I told you earlier, and you're going to see this in
14 the evidence in this case, this is going to be in your hands,
15 is that the new form for N-400 -- not the one that he signed,
16 but the new one, has expanded, okay?

17 Some of -- these are some of the questions that have
18 been added to the new form because the old Question 11
19 standing alone is based on the applicant's opinion, so now
20 they've added this whole big section with these questions.

21 And this new line of questions aren't based on your
22 opinion, they're factual questions, okay, and they're not
23 subject to interpretation, but they help Immigration learn a
24 lot more, so let's go over a couple of them.

25 "Were you ever involved in any of the following:

1 genocide, torture, killing or trying to kill someone?" "Were
2 you ever a member, did you serve in, help or otherwise
3 participate in any of the following: a military group, a
4 paramilitary unit, vigilante group, rebel group, guerrilla
5 group?"

6 They go on to ask -- the next slide -- "Were you
7 ever part of any group or did you ever help any group or
8 organization that used a weapon against any person or
9 threatened to do so?"

10 "If you answered yes, when you were part of this
11 group, did you ever use a weapon?" They ask if you've ever
12 sold or given weapons to another person. You have to answer
13 yes or no to that. This is all new.

14 They ask if you've ever received any military
15 training, weapons training. They even ask if you've ever
16 recruited or enlisted or conscripted child soldiers -- like
17 the Government's talking about, child soldiers. Did you ever
18 use any person under 15 to do anything.

19 You see, if Tom were asked these new questions
20 today, if Tom were asked these new questions today he would
21 probably have to answer yes to many of them because those are
22 the facts about what happened in Liberia, not his opinion
23 about why it happened or his opinion about whether it
24 constituted persecution.

25 And the facts about what happened in Liberia is

1 what's -- on any form is what's important to Immigration, so
2 even if Tom had been asked and answered yes to these
3 questions, I mean here's the point, even if Tom had been given
4 this new form and answered yes to those questions -- answered
5 yes, let's just say he answered yes to all of those questions,
6 he would still answer no to Question 11.

7 He would have still answered no, that in his opinion
8 based on his knowledge and belief, he persecuted anyone
9 because he just doesn't see it that way. And that's the only
10 thing that matters in this case.

11 That's what the Judge is going to tell you, that's
12 what the law is, is how he sees it. Remember, take a look at
13 that again. Tom signs that to the best of his knowledge and
14 belief and that's why he answered that question, Question 11,
15 the way he did.

16 Here's the last question. Question 18, let's take a
17 look at that. They asked Tom has he ever been convicted of a
18 crime or offense. And his attorney, Attorney Nguyen, checked
19 the box -- you can see it's computer -- it's checked on the
20 computer, and then when Ms. Eikerenkoetter asked questions she
21 does a little manual check next to it.

22 So it said have you ever been convicted of a crime
23 and the form is checked "no." Now look, Tom has never tried
24 to hide the fact that he had contact with the police when he
25 was a young man. It was a couple of petty misdemeanors.

1 He gave the -- it's all in his A file, so when I say
2 "petty" I mean like one of the things in his A file talks
3 about he had a job working for a parking garage and he
4 pocketed a \$1 bill, that was the charge. So when we're
5 talking petty, we're talking petty, okay?

6 Tom submitted, through counsel, his record, his
7 criminal record and the documentation that he could obtain to
8 outline it. So the Government wants to say he's lying, he's
9 trying to hide who he is.

10 First of all, he did check the box "no," but then if
11 you go to the next screen he says further down on that same
12 page they said, "Have you ever been convicted of a crime?"
13 "No." He writes -- it said if you answered "yes" to any of
14 them, which he answered "no," complete the following.

15 And he writes, "receiving stolen property, 1982 in
16 New York, pled guilty to a misdemeanor," okay? So he's
17 telling them yes I've been convicted, I pled guilty to a
18 misdemeanor, notwithstanding that there was an error in the
19 checked box.

20 And he -- not only did he explain in detail that and
21 another contact that he had that nothing happened with, not
22 only did he give the details on that in the box, he submitted
23 documentation with the N-400, certified copies of these
24 convictions.

25 So if you look the N-400 supporting documents, the

1 first is the criminal record from New York with that case
2 where he got probation, the receiving stolen property, and
3 then he tried to get a record of his conviction from Queens
4 but they sent back the letter saying it was too old and they
5 had destroyed the file.

6 So but he gave both of those documents to
7 Immigration, and so it's abundantly clear that he wasn't
8 trying to hide his criminal record, he was actively disclosing
9 it. And, you know, as far as those petty cases go, one was a
10 conditional discharge and one was a non-conditional discharge.

11 It's unclear what that means other than the fact
12 that it's some sort of probation or unsupervised probation and
13 no fine and no jail time, so it's hard to know how those
14 particular things are classified because they're not -- they
15 don't say it's a conviction, they say it's a discharge --
16 unconditional, conditional.

17 So that's -- you know, that's why he checked the
18 box, but he gave all the documentation. He clearly wasn't
19 trying to hide anything about that to Immigration. So those
20 are the four questions. That's it. That's it.

21 And that's how that 15-minute interview went down
22 and that's what this case is about. And this case is about
23 the time it took Attorney Nguyen to check those boxes on the
24 computer and a 15-minute interview with Ms. Eikerenkoetter and
25 Attorney Basso and Tom.

1 So that's the -- that's the period of time where you
2 guys have to figure out if there was criminal activity in
3 there, in that time with the form and in that time, that 15
4 minutes with the interview.

5 At best, the Government could say that Tom and his
6 lawyer's initial responses were imprecise I guess or
7 incomplete, which is explained by the time period and the time
8 constraints and how the questions were asked, the vagueness of
9 Questions 10 and 11.

10 But that's certainly not criminal, okay? Let's not
11 forget that by the time the N-14 is filed, all that
12 information is correct, true and correct. And they're not
13 disputing that. Believe me, there would be charges if he made
14 false statements in the N-14, right? Or if he held something
15 back.

16 You would hear about those charges. There's no
17 charges for that. That's true and correct. So after all this
18 investigation, two interviews with Tom and his lawyer -- one
19 with the Immigration woman and one with the FBI and
20 Immigration on this other guy's case where he made himself
21 available to answer any questions that they had, anything they
22 want, he's there with his lawyer and he's an open book.

23 After all that, after looking at the N-14, after
24 doing their investigation, they decide to finally adjudicate
25 the application and they denied Tom citizenship, and nobody's

1 here to secondguess that, okay?

2 It was in their discretion, as it always is, and
3 it's a vital gate-keeping process and they can decide who can
4 and can't be here as citizens and Tom can go back to Liberia
5 when this is over, but that should have been the end of the
6 story, okay?

7 This -- the Government has an interest, it is vital
8 gate-keeping. Okay, then it's done. Then why isn't it done
9 then? If that's what this is really about, if it's really
10 about protecting the citizenship process and it's really about
11 Immigration making sure people -- who gets -- who gets
12 admitted, if that's what it's really about, why wasn't it over
13 when his application was denied?

14 Because that should have been the end of the story
15 but it wasn't. Five years later they decided to bring charges
16 here in Federal Court. Why is that? What's really going on
17 here? I mean, why is a case that should take like three days
18 becoming a case where the Government's calling like 60
19 witnesses?

20 Listen, I want to be clear to you that we have no
21 control over what witnesses they decide to call. I mean, or
22 what witnesses they decide to bring here on the taxpayer's
23 dime, we don't have any control over that. That's up to them.
24 That's their call, it's their choice, it's within their
25 prosecutorial discretion.

1 And in creating this lengthy witness list he
2 described, I mean, that did allow them to travel to London, to
3 Paris, to the Netherlands, to Africa, to Australia. Calling
4 just some Immigration witnesses takes some four blocks away at
5 2nd and Chestnut because that's where their offices are.

6 But, you know, I'm sure it's not just that they
7 wanted to travel the world, right? I mean, perhaps they
8 genuinely want to hold someone accountable for the trauma that
9 Liberian civilians were forced to endure during the civil war
10 decades ago.

11 You know, the US Government doesn't have the
12 jurisdiction, it doesn't have the authority to prosecute war
13 crimes that happened in Africa. It doesn't. The Liberian
14 Government took the action that it felt was appropriate. They
15 had a Truth and Reconciliation Commission. You're going to
16 hear about that.

17 They investigated both of their civil wars. They
18 heard from over 5,000 witnesses, issued a comprehensive
19 report, and the former President of Liberia, Ellen Johnson
20 Sirleaf, a Nobel Peace Prize winner, made the decision that
21 the country was going to go forward without prosecuting
22 anyone.

23 So there's nothing that can happen in this courtroom
24 that they can do, and there's nothing you can do that can
25 change that. I mean, convicting Tom of crimes he didn't

1 commit isn't going to rewrite history, it's not going to write
2 any wrongs that may have been committed during the war, and
3 it's absolutely precluded by law.

4 You've sworn an oath as jurors -- you're going to
5 hear about it again when the Judge gives you the instruction
6 -- you've sworn an oath to apply the rule of law to the facts
7 as you find them. So even if you want to in your heart of
8 hearts hold someone accountable for what happened in the civil
9 war, you can't do it in this courtroom. It can't happen here.

10 And it certainly can't be Tom because Tom never
11 intended to deceive Immigration during the citizenship
12 application process, and so when this case is over I'm going
13 to ask you to find him not guilty.

14 (Defense opening statement concludes at 12:46 p.m.)

15 * * *

16 C E R T I F I C A T I O N

17
18 I, Diane Gallagher, court approved transcriber,
19 certify that the foregoing is a correct transcript from the
20 official electronic sound recording of the proceedings in the
21 above-entitled matter.

22
23 _____
24 DIANE GALLAGHER

DATE

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